

STATE OF NEW JERSEY

Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

DIVISION OF ENERGY

IN THE MATTER OF THE PETITION OF)	ORDER ON MOTION FOR
ATLANTIC CITY ELECTRIC COMPANY,)	INTERLOCUTORY REVIEW
D/B/A CONECTIV POWER DELIVERY, FOR)	
APPROVAL OF AMENDMENTS TO ITS)	
TARIFFS TO PROVIDE FOR AN INCREASE)	
IN RATES FOR ELECTRIC SERVICE)	BPU DOCKET NO. ER02080510
)	OAL DOCKET NO. PUC 6917-02

(SERVICE LIST ATTACHED)

BY THE BOARD:

This matter is before the Board to consider a motion by Cogentrix Energy, Inc. ("Cogentrix") to reconsider the Board's January 15, 2003 Order, in which it affirmed the order of the Administrative Law Judge ("ALJ") Diane C. Sukovich, issued on December 9, 2002, denying Cogentrix's Motion to Intervene in the above matter. For the reasons set forth herein, the Board has determined to deny Cogentrix's Motion for Reconsideration.

Background and Procedural History

This proceeding was initiated by Atlantic City Electric Company (hereinafter "ACE") in compliance with the Final Order issued in ACE's restructuring, rate unbundling, and stranded cost proceeding. In the Matter of Atlantic City Electric Company--Rate Unbundling, Stranded Cost and Restructuring Filings, BPU Docket Nos. E097979455, et seq. ("Final Order"). ACE's petition seeks recovery of amounts under, and the setting of appropriate levels for, certain charges in its tariffs, specifically, its Market Transition Charge ("MTC"), Net Non-Utility Generation Charge ("NNC") and Societal Benefits Charge ("SBC"). The petition was transmitted to the Office of Administrative Law ("OAL") as a contested case on August 29, 2002.

On October 25, 2002, Cogentrix moved to intervene in this proceeding based on its claim that it had a substantial interest in the outcome of the proceeding. Petitioner ACE filed a reply in opposition to the motion on November 14, 2002, stating that as a passive investor in two Non-Utility Generation contracts, whose terms were not the subject of this proceeding, Cogentrix lacked a substantial interest in the outcome of the proceeding. Both parties filed additional papers with the ALJ.

By order dated December 9, 2002, the ALJ ruled that movant Cogentrix had failed to meet the legal criteria for intervention set forth in N.J.A.C. 1:1-16.1(a). In so ruling, the ALJ reasoned that: "Cogentrix has not demonstrated a substantial, specific or direct interest in the current matter." (ALJ Order, p. 1). Cogentrix's basis for seeking intervention was its claim that it was a general partner within a partnership owning and operating two large cogeneration power plants, Chambers Cogeneration Limited Partnership ("CCLP") and Logan Generating Company, LP ("LGCLP"). The two plants have long-term power purchase agreements with petitioner ACE. The ALJ concurred with the petitioner that the terms of those contracts could not be adjusted in the current rate proceeding. In addition, the ALJ reasoned that another general partner with Cogentrix, PG&E National Energy Group ("PG&E"), is a member of the Executive Board of the Independent Energy Producers of New Jersey ("IEPNJ"), a party that was granted intervenor status in the matter.

As part of her Order, the ALJ granted Cogentrix participant status pursuant to N.J.A.C. 1:1-16.6, limited to the right to file post-hearing briefs and to file exceptions to an Initial Decision.

On December 24, 2002, Cogentrix moved for interlocutory review of the ALJ's order. Cogentrix's motion was not filed within five working days of Judge Sukovich's order, as required by N.J.A.C. 1:1-14.10(b), and was therefore untimely.

On December 31, 2002, ACE filed a response, objecting to the granting of interlocutory review sought by Cogentrix.

On January 15, 2003, the Board issued an order, memorializing its decision at its January 8 agenda meeting, in which it: 1. granted interlocutory review of the ALJ's order; and 2. affirmed the decision of the ALJ.

On February 4, 2003, Cogentrix filed a Motion for Reconsideration of the Board's January 15, 2003 order, in which it essentially restated the arguments and previous certifications contained in its filing of December 24, 2002. On February 6, 2003, ACE filed a response, opposing the grant of Cogentrix's Motion for Reconsideration. On February 14, 2003, Cogentrix filed a reply in support of its Motion for Reconsideration.

Discussion and Findings

As set forth in N.J.A.C. 1:1-18.5, the legal standard for granting a motion for reconsideration is strict: such a motion may only be granted on a showing of “extraordinary circumstances.” See generally State of New Jersey v. Boardwalk Regency Corp., et al., 94 N.J.A.R. 2d 73 (1993)(on motion to reopen the record pursuant to N.J.A.C. 1:1-18.5, the new evidence must have the capacity to effect a change in the determination of a material fact or a conclusion of law reached in the initial decision).

Based on a review of the submissions and the strict legal standard contained in N.J.A.C. 1:1-18.5, Cogentrix has not met the criteria for consideration of its motion for reconsideration.

Cogentrix’s motion papers merely restate previous arguments made to the ALJ and contained in its motion papers for interlocutory review filed with the Board. Cogentrix asserts that it has a substantial interest in the proceeding. It also contends that its testimony on the long-term purchase power agreements would be relevant to the proceeding, while at the same time it offers to not provide such testimony in light of the Board’s January 15, 2003 Order. Cogentrix also claims that the intervention of IEPNJ does not substitute for Cogentrix, and that its motion for interlocutory review was not untimely.

As discussed at length in the Board’s January 15, 2003 Order, affirming the ALJ’s decision, Cogentrix’s claim that it has a substantial interest in the outcome of the proceeding fails because: 1. neither the contract terms nor the rates received by CCLP and LGCLP will be affected by this proceeding; 2. Cogentrix is not a customer of ACE; and 3. this proceeding does not involve the interpretation by the Board of these contracts; rather, this proceeding will, among other things, consider how ACE’s above-market NUG contract costs will be recovered by ACE from its ratepayers.

Further, Cogentrix’s relevant interest here--as a supplier of ACE-- is already represented by IEPNJ, which is an intervenor in this matter. As set forth in ACE’s supporting papers, it is PG&E, which sits on the IEPNJ executive board, which is the point of contact on the two purchase power agreements. Affidavit of Jerry A. Elliott, filed December 31, 2002. In addition, since Cogentrix has participant status, it will have the opportunity to provide input to the Board by filing post-hearing briefs and exceptions.

In addition, Cogentrix’s motion for interlocutory review was untimely because it was submitted within five working days of receipt of the ALJ’s order, N.J.A.C. 1:1-14.10(b); Cogentrix’s claim to the contrary is unsupported.

Accordingly, Cogentrix's motion, filed on February 4, 2003, for reconsideration of the Board's order of January 15, 2003, denying its motion for interlocutory review of the ALJ's order is hereby **DISMISSED**.

DATED: 3/24/03

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)
KRISTI IZZO
SECRETARY

I/M/O THE PETITION OF ATLANTIC CITY ELECTRIC COMPANY

D/B/A CONECTIV POWER DELIVERY FOR APPROVAL OF
AMENDMENTS TO ITS TARIFF TO PROVIDE FOR AN
INCREASE IN RATES FOR ELECTRIC SERVICE

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SERVICE LIST

Kristi izzo, Secretary
Office of the Secretary
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

John Stanziola
Executive Director
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Nusha Wyner, Director
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Dr. Fred Grygiel
Chief Economist
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Peter Yochum
Bureau Chief
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

George Riepe
Assistant Director
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Althea Curry
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Linda Nowicki
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Alice Bator
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Lisa Nicaastro
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Robert Schulthesis
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Ugoji Nnajindu
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Mandouh Fahmy
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Beverly Tyndell
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Dennis Moran
Assistant Director
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Jacqueline Galka
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

James Brown
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Eloise Flores
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Ricky John
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Frank Perrotti
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Sheila Iannacone
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Robert Catona
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Robert Glowacki
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Judith Appel, Esq.
Division of Ratepayer
Advocate
31 Clinton Street
Post Office Box 46005
Newark, NJ 07102

Larry Gentieu
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

James Giuliano
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Riaz Shaikh
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Kent Papsun
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Rene Demuyunck
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Henry Rich
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Jorge Nery
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Helene Wallenstein, DAG
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101

Elise Goldblatt, DAG
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101

Todd C. Steadman, DAG
Division of Law
Post Office Box 45029
Newark, NJ 07101

Alex Moreau, DAG
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101

Mark Beyer
Office of the Economist
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Glen Reilly
Legal Specialist
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Tirza Wahrman, DAG
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101
Kurt S. Lewandowski, Esq.

Division of the Ratepayer
Advocate
31 Clinton Street
Post Office Box 46005
Newark, NJ 07102

Ami Morita, Esq.
Division of Ratepayer
Advocate
31 Clinton Street
Post Office Box 46005
Newark, NJ 07102

Susan E. McClure, Esq.
Division of Ratepayer
Advocate
31 Clinton Street
Post Office Box 46005
Newark, NJ 07102

Badrhn M. Ubushin, Esq.
Division of Ratepayer
Advocate
31 Clinton Street
Post Office Box 46005
Newark, NJ 07102

Walter P. Szymanski
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Bharat Patel
Office of the
Commissioner
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

David Nichols
Tellus Institute
11 Arlington Street
Boston, MA 02116-3411

Steven S. Goldenberg,
Esq. - Greenbaum, Rowe,
Smith, Ravin, David &
Himmel, LLP - Metro
Corporate Campus 1
Post Office Box 5600
Woodbridge, NJ 07095

Francis R. Perkins, Esq.
Meyner & Landis
One Gateway Center
Suite 2500
Newark, NJ 07102

James H. Laskey, Esq.
Norris, McLaughlin &
Marcus
721 Route 202-206
Post Office Box 1018
Somerville, NJ 08876

Paul Forshay, Esq.
Sutherland, Asbill &
Brennan
1275 Pennsylvania
Avenue, NW
Washington, DC 20004

David Brooks, DAG
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101

Joseph Quirolo, Esq.
Legal Specialist
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Roger D. Colton
Fisher, Sheerman &
Colton
Public Finance & General
Economics (FSC)
34 Warwick Road
Belmont, MA 02178

Suzanne M. Haycock
Executive Director
Mid-Atlantic Power Supply
Association
6 East Main Street
Suite 6E
Ramsey, NJ 07446

Karen Nations, Esq.
The Rothfelder Law
Offices
625 Central Avenue
Westfield, NJ 07090

Cathy Kleebanov Brown,
Esq.
Waters, McPherson,
McNeill
300 Lighting Way
Secaucus, NJ 07096

Melanie Fund Pein, Esq.
Pace University Mid-
Atlantic Energy E-House
78 North Broadway
White Plains, NY 10603

Seema Singh
Division of Ratepayer
Advocate
31 Clinton Street
Post Office Box 46005
Newark, NJ 07102

Felicia Thomas-Friel, Esq.
Division of the Ratepayer
Advocate
Post Office Box 46005
Newark, NJ 07102

David Cruthirds
Electric Clearinghouse,
Inc.
1000 Louisiana
Suite 5800
Houston, TX 77002

Howard O. Thompson,
Esq.
Meyner & Landis
One Gateway Center
Suite 2500
Newark, NJ 07102

William Harla, Esq.
DeCotis, Fitzpatrick &
Gluck
Glenpointe Centre West
500 Frank W. Burr Blvd
Teaneck, NJ 07666

Steven Gabel
Gabel Associates
417 Denison Street
Highland Park, NJ 08904

Richard V. Hollyer, Esq.
Dolan & Dolan
One Legal Lane
(53rd Spring Street)
Post Office Box D
Newton, NJ 07860

Alan Rosenber
Brubaker & Associates
1215 Fern Ridge Parkway
Suite 208
Post Office Box 412000
St. Louis, MO 63141

Robert R. Stephens
Brubaker & Associates
1215 Fern Ridge Parkway
Suite 208
Post Office Box 412000
St. Louis, MO 63141

Phyllis J. Kessler, Esq.
Rudman, Trachien &
Kessler
The Empire State Building
350 Fifth Avenue
Suite 4400
New York, NY 10118

Andrea Crane
The Columbia Group, Inc.
38 C. Grove Street
Ridgefield, CT 06877

Charles F. Morgan, Jr.
Manager Restructuring
Conectiv Power Delivery
5100 Harding Highway
Suite 155
Mays Landing, NJ 08330

Howard O. Thompson,
Esq.
Sills, Cummis, Radin,
Tischman, Epstein &
Gross
One Riverfront Plaza
Newark, NJ 07102

Edward Lloyd, Esq.
Rutgers Environmental
Law Clinic
15 Washington Street
Room 334
Newark, NJ 07102

William Marcus
JBS Energy, Inc.
311 D Street – Suite A
W. Sacramento, CA 99605

James E. McGuire Esq.
Reed, Smith Shaw &
McCloy
Princeton Forrestal Village
136 Main Street
Suite 250
Princeton, NJ 08540

Stephen B. Genzer, Esq.
LeBeouf, Lamb, Green &
MacRoe, LLP
One riverfront Plaza
Newark, NJ 07102

Randall V. Griffin, Esq.
Conectiv
Legal Department
800 King Street
Post Office Box 231
Wilmington, DE 19899

Andrew L. Indeck, Esq.
Scarinci & Hollenbeck,
LLC.
500 Plaza Drive
Post Office Box 3189
Secaucus, NJ 07096

Dale Bryk
Natural Resources
Defense Council
40 West 20th Street
11th Floor
New York, NY 10011

Staci A. Berger
New Jersey Citizen Action
85 Raritan Avenue
Suite 100
Highland Park, NJ 08901

James Rothschild
Rothschild Financial
Consulting Service
115 Scarlet Oak Drive
Wilton, CT 06897

Mark L. Mucci, Esq.
Leboeuf, Lamb, Greene &
MacRae, LLP
One Riverfront Plaza
Newark, NJ 07102

Elizabeth Lempkul
Barrington Wellesley
Group
4157 Lakeshore Avenue
Oakland, CA 94610